

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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THE ESTATE OF STANLEY KAUFFMANN,

Plaintiff,

v.

ROCHESTER INSTITUTE OF TECHNOLOGY,

Defendant and  
Third-Party Plaintiff,

v.

ROBERT J. CARDULLO,

Third-Party Defendant.

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**DECLARATION OF DAVID MYER,  
THE NEW REPUBLIC**

Case No. 6:17-cv-06061-CJS-MWP

**David Myer**, declares, pursuant to 28 U.S.C. § 1746, that the following is true and correct:

1. I am employed as the Controller for The New Republic, which publishes a periodical magazine.
2. This declaration is based upon my personal knowledge and in my capacity as Controller and as the custodian of certain records maintained by The New Republic. I am authorized to make this declaration.
3. The documents annexed hereto as Exhibits A and B were produced by The New Republic to Defendant and Third Party Plaintiff Rochester Institute of Technology in the above-referenced matter in response to a subpoena that was served on November 1, 2017.
4. The documents annexed hereto as Exhibits A and B were made and/or maintained by the personnel or staff of The New Republic, or persons acting under its control, with

knowledge of the act, transaction, occurrence, or event recorded therein and in the regular course of the business, at the time of the act, transaction, occurrence or event recorded therein, or within a reasonable time thereafter, and it was in the regular course of the business to make and keep such records.

5. Attached hereto as Exhibit A is a letter agreement between Stanley Kauffmann and The New Republic dated March 22, 2004.

6. Attached hereto as Exhibit B is a letter from The New Republic to Stanley Kauffmann dated April 2, 1993.

7. Stanley Kauffmann wrote articles for and at the request of The New Republic for decades.

8. Mr. Kauffmann was paid a flat monthly fee for his contributions to The New Republic, in exchange for which Mr. Kauffmann was expected to write one or more articles for The New Republic each month.

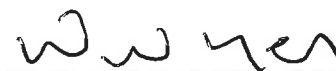
9. From January 1998 through February 1999, Mr. Kauffmann was paid a flat fee of \$3,000 per month in exchange for his contributions to The New Republic.

10. Beginning in March 1999, this flat amount increased to \$3,750 per month for Mr. Kauffmann's contributions to The New Republic for the remainder of 1999.

11. Mr. Kauffmann was paid \$4,000 per month in exchange for his contributions to The New Republic in 2000 and 2001.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on November 30<sup>th</sup>, 2017.



David Myer

# EXHIBIT A



# THE NEW REPUBLIC

10091

Leon Wieseltier

March 22, 2004

Stanley Kauffmann  
Penthouse C  
10 West 15th Street  
New York, NY 10011

Dear Stanley,

Like many publishing companies, *The New Republic* is working to expand into the web and related technologies, and in so doing, afford you maximum exposure. We've had a wonderful relationship with you over the years and see this expansion as a great opportunity to further promote you and your talents for our mutual benefit. Recent Supreme Court decisions have made it necessary that we explicitly confirm the terms under which you write for *The New Republic*.

Thus, in the interest of responsibly managing our business, we are making efforts to memorialize in writing all of our agreements with our writers, including freelance contributors. Our agreement with you has always been an oral understanding, and among other things we do want to ensure that we are not violating your rights in any way. To that end, we'd like to confirm with you our understanding of our past relationship with you, as well as our relationship with you and your contributions to *The New Republic* going forward.

We have always understood that you have been writing articles for *The New Republic* as a freelance contributor. We have also always understood in doing business with you that, in light of our regular monthly compensation arrangement with you, all articles you have written for *The New Republic* have been "works made for hire," as that term is defined under the US Copyright laws. We'd like to confirm with you that the above understanding of our business relationship with you is correct, but also that the above understanding will remain in effect as to any future articles you write for *The New Republic*, unless and until we and you both agree otherwise in writing.

Please acknowledge your agreement with us about this by so indicating with your signature below.

Many thanks.

Sincerely,

Leon Wieseltier  
Literary Editor

Date: March 24, 2004

Agreed: ✓

Author Signature [Signature]

13138

# EXHIBIT B

FOR CHLOE



April 2, 1993

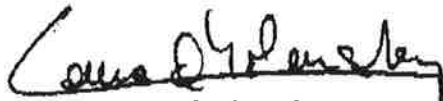
1220 19th St. NW  
Washington, DC 20036  
202-331-7494

Mr. Stanley Kauffmann  
Penthouse C  
10 West 15th Street  
New York, N.Y. 10011

Dear Mr. Kauffmann:

This is to confirm our telephone call this morning. You may, of course, reprint any or all the film reviews you have done for TNR in your forthcoming anthology. We'd simply request that there be some indication that the essays first appeared in our pages.

Sincerely,

  
Laura Obolensky  
Rights & Permissions